

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

LINDA J. STENGLE,	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	No. 4:06-CV-1913
v.	:	
	:	
OFFICE FOR DISPUTE RESOLUTION,	:	HONORABLE
COMMONWEALTH OF PENNSYLVANIA	:	JOHN E. JONES, III
DEPARTMENT OF EDUCATION,	:	
KERRY VOSS SMITH (in her individual and official	:	
capacity),LINDA O. RHEN, (in her individual capacity)	:	
ERNEST HELLING (in his individual capacity),	:	
DIANE CASTELBUONO (in her individual capacity),	:	*FILED
M. PATRICIA FULLERTON (in her individual	:	ELECTRONICALLY*
capacity),	:	
LANCASTER-LEBANON INTERMEDIATE UNIT 13,	:	
ABIGAIL TIERNEY (in her individual capacity), and	:	
JOHN TOMMASINI (in his individual capacity)	:	
	:	
Defendants	:	

SECOND AMENDED RULE 26 DISCLOSURES OF DEFENDANTS
OFFICE FOR DISPUTE RESOLUTION, KERRY VOSS SMITH AND
LANCASTER-LEBANON INTERMEDIATE UNIT 13

Defendants Office for Dispute Resolution, Kerry Voss Smith and Lancaster-Lebanon Intermediate Unit 13, by and through their attorneys, hereby disclose the following information as required by Fed. R. Civ. P. 26:

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information:

1. Kerry Voss Smith, Esquire, Director, Office for Dispute Resolution, 6340 Flank Drive, Harrisburg, PA 17112.

2. Edward G. Titterton, III, Esquire, Philadelphia, PA. Mr. Titterton was hired as a consultant to assist hearing officers in developing ways to improve the clarity of writing in their written decisions.

3. Dr. John Bonfield, former Executive Director, Lancaster-Lebanon Intermediate Unit 13, 1020 New Holland Avenue, Lancaster, PA 17601. Dr. Bonfield executed Plaintiff's final contract with Lancaster-Lebanon Intermediate Unit 13 for the period July 1, 2005 – June 30, 2006.

4. Dixie Rider, Case Manager, ODR, 6340 Flank Drive, Harrisburg, PA 17112. Ms. Rider had frequent interaction with Plaintiff regarding Plaintiff's service as a due process hearing officer.

5. Members of the ODR Focus Group, who in or about June 2005 were presented with various issues and concerns raised by hearing officers regarding the reauthorization of IDEA and its applicability to due process hearings. The Focus Group made final recommendations, which ultimately were implemented by ODR.

6. Scott H. Wolpert, Esquire, Timoney Knox, LLP, Ft. Washington, PA. Mr. Wolpert represented Wissahickon School District in the matter [] G. v. Wissahickon School District, ODR Case No. 5897/ 05-06 in which Plaintiff served as a hearing officer. Mr. Wolpert sought Plaintiff's recusal in that matter in light of her service on the Gaskin Advisory Panel and the content of her Internet web log.

7. Judith Gran, Esquire, Public Interest Law Center, Philadelphia, PA. Ms. Gran was lead counsel for plaintiffs in the Gaskin litigation, and she also represented complainants in the G. matter. Ms. Gran sought Plaintiff's recusal in the G. matter because of their respective roles with regard to the Gaskin litigation and their frequent contact as a result thereof.

8. Members of the Gaskin Advisory Panel.

9. E.G., parent of E.G., who was a complainant in the matter E.G. v. Wissahickon School District, ODR Case No. 2967/ 03-04 in which Plaintiff

served as hearing officer. E.G. testified during her deposition in the subsequent federal court litigation that she did not believe Plaintiff could be an objective hearing officer in light of her service on the Gaskin Advisory Panel.

10. Andrew Faust, Esquire, Sweet, Stevens, Katz & Williams, New Britain, PA. Mr. Faust and his firm represented the Boyertown Area School District during a period of time in which Plaintiff's son attended school in the District. Plaintiff's son has been identified as a child with special needs, and he also was a member of the Gaskin class. It is believed that Plaintiff and Mr. Faust communicated on multiple occasions concerning her son's educational needs.

11. Robert Frankhouser, Esquire, Hartman, Underhill & Brubaker, LLP, Lancaster, PA. Ms. Smith sought and obtained a legal opinion from Mr. Frankhouser concerning whether to re-appoint Plaintiff as a due process hearing officer.

B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:

1. Due Process Hearing Officer Contract between Plaintiff and Lancaster-Lebanon Intermediate Unit 13 for the period July 1, 2002 – June 30, 2003.

2. Due Process Hearing Officer Contract between Plaintiff and Lancaster-Lebanon Intermediate Unit 13 for the period July 1, 2003 – June 30, 2004.

3. Due Process Hearing Officer Contract between Plaintiff and Lancaster-Lebanon Intermediate Unit 13 for the period July 1, 2004 – June 30, 2005.

4. Due Process Hearing Officer Contract between Plaintiff and Lancaster-Lebanon Intermediate Unit 13 for the period July 1, 2005 – June 30, 2006.

5. Hearing Officer Handbook.

6. Special Education Dispute Resolution Manual.

7. ODR Focus Group/ Advisory Committee Meeting attendance sheet dated June 22, 2005, which identifies those members of the Group in present at the meeting.

8. All e-mail and other correspondence between ODR and PDE relating to the decision not to renew Plaintiff's Hearing Officer contract.

9. All entries in Plaintiff's internet web log.

10. Mr. Wolpert's April 25, 2006 letter to Plaintiff requesting her recusal in the G. matter.

11. Ms. Gran's May 3, 2006 letter to Karen Eberly, ODR Case Manager, requesting Plaintiff's recusal in the G. matter.

12. Plaintiff's Order entered in the G. matter dated May 22, 2006 which in part denied the parties' respective requests for her recusal.

13. Transcript of E.G. deposition testimony with regard to the matter L.G. and E.G. et al. v. Pennsylvania Department of Education, et al., Case No. 2-06-cv-0333.

14. All due process hearing opinions and orders prepared by Plaintiff in which she cited or otherwise referred to the Gaskin litigation.

15. All records maintained by ODR which confirm that Plaintiff missed deadlines in submitting written opinions and orders concerning due process matters over which Plaintiff presided as hearing officer.

16. All e-mail and other correspondence concerning Plaintiff's performance as a due process hearing officer.

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Not applicable.

D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made necessary to satisfy the judgment:

1. Selective Insurance Company Policy No. S1323581. The policy will be made available for inspection and copying at the offices of Marshall, Dennehey, Warner, Coleman & Goggin, 4200 Crums Mill Road, Suite B, Harrisburg, PA 17112.

2. School Boards Insurance Company of Pennsylvania, Inc., Policy No. SLL314-06. The policy will be made available for copying and inspection at the offices of Stock & Leader, Susquehanna Commerce Center East, Suite 600, 221 West Philadelphia Street, York, PA 17401-2994.

3. By letter dated August 6, 2008, Defendants Lancaster-Lebanon IU 13, Office of Dispute Resolution, and Kerry Voss Smith were advised that the aforementioned Selective Insurance Company Policy No. S1323581 will not provide coverage for this claim. This letter will be made available for copying and inspection at the offices of Marshall, Dennehey, Warner, Coleman & Goggin, 4200 Crums Mill Road, Suite B, Harrisburg, PA 17112.

E. Contested facts.

See generally, Answer with Affirmative Defenses filed on behalf of Defendants Office for Dispute Resolution and Kerry Voss Smith.

Further, Lancaster-Lebanon Intermediate Unit 13 specifically denies that Plaintiff was an employee at any time relevant hereto; rather, Plaintiff was an independent contractor.

F. The identity of any person who may be used at trial to present evidence under Rules 702, 703 or 705 of the Federal Rules of Evidence

Julie B. Kessel, M.D. of Tampa, Florida. An expert report will be forthcoming upon receipt.

Respectfully Submitted,

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

Dated: September 2, 2008

s/ Sharon M. O'Donnell, Esquire

Sharon M. O'Donnell, Esquire

I.D. No. 79457

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CERTIFICATE OF SERVICE

I, Sunshine J. Miller, Esquire, of Marshall, Dennehey, Warner, Coleman & Goggin, do hereby certify that on September 2, 2008, I served a copy of the Defendant Office of Dispute Resolution's Second Amended Rule 26 Disclosures via electronic mail as follows:

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